

51



Doc ID: 034361450011 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 09/17/2019 at 10:43:21 AM  
Fee Amt: \$57.00 Page 1 of 11  
Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2019-00024548

BK 17497 PG 739-749

RETURN TO:  
Return to Preparer: Lisa R. Wilson, 475 Alice's Road, Suite A, Waukee, Iowa, 50263 (515) 369-2502

**MASTER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR PARK SIDE**

THIS DECLARATION ("Declaration") is made this 17 day of September, 2019, by Parkside Land Company, L.L.C., an Iowa limited liability company ("Declarant").

**RECITALS**

WHEREAS, Declarant is the owner and developer of certain real property legally described as Lots 1 through 81, inclusive, and Outlots X and Y, in Park Side Plat 2.

WHEREAS, Declarant desires to develop the Property in phases as a master-planned, mixed use community.

WHEREAS, Declarant desires to establish a Master Association to own, operate and maintain certain common areas located within the Property, to collect assessments for the purpose of maintenance and improvement of the common areas and the common amenities and to administer activities relating thereto for the benefit of the Property and each Owner thereof.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the land and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**I. DEFINITIONS**

A. "Additional Land" shall mean and refer to any additional land annexed and subjected to this Declaration pursuant to Article V hereof.

B. "Master Association" shall mean and refer to Park Side Master Owners Association, Inc., a non-profit corporation organized pursuant to Chapter 504, Revised, of the Code of Iowa, and its successors and assigns.

C. "Association Responsibility Elements" shall mean the following:

1. Outlots X and Y, including, but not limited to, any landscape buffer areas, private storm and sanitary sewers, private water mains, and storm water drainage and detention areas located thereon.

D. "Board" or "Board of Directors" shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.

E. "City" shall mean the City of Bondurant, Iowa.

F. "Common Areas" shall mean all real property, including improvements thereto, maintained by the Association for the common use and enjoyment of the Owners, specifically defined in this Declaration or any other declaration of covenants, conditions and restrictions affecting the Property or a portion thereof, including Outlots X and Y, but shall not include those common areas specifically reserved for the use and enjoyment of the owners of any specific subdivision plat or portion of the Property.

G. "Declarant" shall mean and refer to Parkside Land Company, L.L.C., an Iowa limited liability company, its successors and assigns.

H. "Declaration" shall mean and refer to this Master Declaration of Covenants, Conditions, Easements and Restrictions to which the Property is subject, as amended from time to time.

I. "Lot" shall mean and refer to an individual parcel of land within the Property which is platted for single family residential dwellings, multi-family residential dwellings, including townhome and condominium associations, or commercial buildings. In the case of a Condominium Regime subjected to this Declaration, a Lot shall also refer to an individual Unit together with any and all other interests appurtenant to such Unit as provided in the recorded Declaration of Submission to Horizontal Property Regime for such Condominium Regime.

J. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration of any other declaration as provided for herein.

K. "Member Associations" shall mean and refer to any association of Owners located in a specific identified subdivision plat or portion of the Property subject to additional covenants, conditions, easements and restrictions and additional owners' associations.

L. "Owner" shall mean a person the person or persons who from time to time collectively hold the entire fee title to a Lot, their tenants, licensees and invitees, including sellers under executory contracts of sale (but shall not include any person or entity who holds such fee

title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such security instruments).

M. "Property" shall mean and refer to Lots 1 through 81, inclusive, and Outlots X and Y, in Park Side Plat 2.

N. Words and phrases in this Declaration shall be construed as in the singular or plural number, unless the context permits only one such manner.

## II. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner shall be a Member in the Master Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment hereunder. Ownership of a Lot shall be the sole qualification for membership. When more than one person holds an interest in any Lot, all such persons shall be Members.

Section 2. Voting. Subject to provisions of Section 3 of this Article, the Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot. In the event that the owners of a Lot fail to determine how to cast any vote, no vote shall be cast for said Lot. All votes for Owners of Lots subject to a Member Association established to serve a specific subdivision or plat within the Property shall be voted "en block" by an individual selected by the Board of Directors of each Member Association. For example, if the votes of the Owners of a specific Member Association vote 120 for and 40 against a resolution, the designated representative would cast the votes on behalf of the Member Association 120 for and 40 against the resolution at any meeting of the Master Association duly called for the purpose of such resolution.

Section 3. Declarant as Sole Voting Member. Notwithstanding any other provision of this Declaration, Declarant shall be the sole voting Member of the Master Association until Declarant no longer owns any portion of the Property or until Declarant waives, in writing, its right to be the sole voting member, whichever first occurs. Declarant shall have the right to elect all Directors and to cast all votes as it deems appropriate. Each Owner by acceptance of a deed shall be deemed to have released Declarant from all claims with respect to actions taken or not taken while Declarant controls the Master Association.

Section 4. Board of Directors. The voting Members shall elect a Board of Directors of the Master Association as prescribed by the Bylaws of the Master Association. The Board of Directors shall manage the affairs and business of the Master Association. The Board of Directors shall have at least one Member from each Member Association.

Section 5. Suspension of Voting Rights. The Master Association shall suspend the voting rights of a Member for any period during which any assessment hereunder against

his/her/its Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Master Association.

### III. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Assessments. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Master Association assessments as provided in this Declaration. The assessments levied by the Master Association and any other charges against the Owner of a Lot set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or charge is made senior to all liens, except the first mortgage of record, any ad valorem taxes, and any special assessments levied by the City. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment or charge fell due. The personal obligation for delinquent assessments or charges shall not pass to said Owner's successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Master Association shall be used exclusively to carry out the duties of the Master Association as set forth above, including, but not limited to, improvement, maintenance, repair, replacement, removal, decoration and demolition of the Association Responsibility Elements, for payment of insurance, utility expenses, salaries, and real estate taxes and assessments associated with the Master Association, Association Responsibility Elements and the Common Areas, for payment of legal liabilities or obligations of the Association and all fees, costs, expenses and attorney fees in connection therewith, any for any other purpose specifically provided for herein.

Section 3. Rate of Assessment. Monthly and special assessments provided for herein shall be fixed in accordance with this Section. Each Lot shall be liable for a pro-rata share of the total budget upon which any annual, monthly or special assessment is based. The annual assessment shall be determined by dividing the total budget for management and maintenance of the Common Areas by the number of Member Associations in the Property, and then further divided by the number of Lots in each respective Member Association's development. For example, if there are two Member Associations and the annual assessment is \$1,000.00, one Member Association shall be allocated \$500.00 of the assessment to be further allocated pro-rata amongst its respective members and the remaining \$500.00 shall be allocated to the other Member Association to be further allocated pro-rata amongst its respective members. The Board of Directors shall fix any increase in the amount of the annual assessment in accordance with the Bylaws of the Master Association.

Section 4. Reserve Fund. A portion of such annual assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair, replacement, removal and demolition of the Association Responsibility Elements and any capital improvement that the Master Association is required to maintain.

Section 5. Special Assessments. In addition to the annual assessment authorized above, the Master Association may levy a special assessment, if necessary, to finance or perform any of its stated duties under this Declaration, provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 6. Payment of Assessments. The general annual assessment provided for above, shall commence as to each respective Lot on the first day of the month following the conveyance by the Declarant of a Lot, and shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Master Association shall fix the amount of such general annual assessments at least thirty (30) days in advance of each annual assessment period. Written notice of such assessments shall be sent to every member of the Master Association subject thereto. The due dates shall be established by the Board of Directors of the Master Association, and the general annual assessments may be collected in equal annual, semi-annual, quarterly, or monthly installments at the discretion of the Board of Directors.

Section 7. Notice of Meeting. Written notice of any meeting called for the purpose of taking any action authorized above, shall be sent to all members not less than five (5) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Collection of Assessments by Member Associations. The assessments levied by the Master Association herein against Owners of Lots that are subject to a Member Association shall be assessed to and collected by the Member Associations. If such assessment is not paid by the Member Association within sixty (60) days after written notice to such Member Association, the assessment shall be a personal obligation of such Member Association and the Owner of each Lot subject to such Member Association on a per Lot basis.

Section 9. Subordination of Assessment Liens. If any property subject to a lien created by any provision in this Declaration shall be subject to the lien of a first mortgage of record: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such mortgage; and (ii) the foreclosure of the lien of such mortgage or the acceptance of a deed in lieu of the foreclosure by the mortgagee, shall not operate to affect or impair the lien except the liens for assessments, if any, as shall have come due up to the expiration of the applicable redemption period and issuance of the sheriff's deed resulting from a decree of foreclosure or the appointment of a receiver in foreclosure proceedings or the acceptance of the deed in lieu of foreclosure. Such assessments shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser and purchasers therefrom taking title free of the lien of such assessments. All such assessments shall be deemed to be an expense of the Member Associations.

Section 10. Effect of Nonpayment of Assessments. Every assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twenty percent (20%) per annum or at the highest rate allowed by Iowa law, whichever is higher, until paid. Such payment and interest shall constitute a lien upon the Lot, and said lien shall continue in full force and effect until the assessment is fully paid. The Master Association shall be entitled to all legal remedies afforded under Iowa law to collect said assessments and shall be entitled to reasonable attorney fees and costs in connection therewith.

Section 11. Exempt Property. Notwithstanding anything to the contrary in this Declaration, Declarant, and the Lots which the Declarant owns, shall not be liable for any assessments made by the Master Association, whether considered general or special.

Section 12. Statement Assessments Paid. The Master Association shall, upon request, and for a reasonable charge, furnish a statement signed by an authorized representative of the Master Association setting forth whether the assessments owing by a Member have been paid. A properly executed statement of the Master Association as to the status of assessments is binding upon the Master Association as of the date of its issuance.

Section 13. No Avoidance by Waiver of Use. Each Owner shall be liable for all assessments for his/her/its Lot made by the Master Association. The liability of an Owner for all assessments made by the Master Association may not be avoided by waive of the use or enjoyment of any common element or by abandonment of a Lot for which an assessment is made.

#### IV. MAINTENANCE OBLIGATIONS OF ASSOCIATION AND COMMON AREAS

Section 1. Maintenance of Association Responsibility Elements/Common Areas. The Master Association shall manage, control and maintain the Association Responsibility Elements and Common Areas as set forth in this Declaration, and shall keep the same in good, safe, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management. The Master Association's responsibilities under this Section are for the exclusive benefit of the Owners.

Section 2. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas subject to the terms of this Declaration which shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

- a. The right and obligation of the Master Association to maintain underground utilities located within any of the Common Areas; and
- b. The right of the Association to promulgate and publish rules and regulations consistent with the Declaration and Bylaws of the Master Association.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Master Association, the right to enjoy the Common Areas to his/her/its invitees.

Section 4. Use of the Common Areas. The Common Areas shall be used strictly in accordance with the provisions of this Declaration and all rules and regulations adopted by the Master Association. No Owner shall obstruct or interfere whatsoever with the rights and privileges of other Owners or the Master Association in the Common Areas. Nothing shall be planted, altered, constructed upon or removed from the Common Areas without the prior written consent of the Master Association. If an Owner violates this section, the Master Association shall have the right but not the obligation to restore the Common Areas to the prior condition and assess the cost thereof against the Owner who violates this section and such cost shall become a lien upon the Lot of such Owner and shall become due and payable upon demand. The Master Association shall have the same rights and powers to collect the cost of such restoration as proved in Article III for the collection of delinquent assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Areas, the Master Association or the offended Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the court may allow together with all necessary costs and disbursements incurred in connection therewith.

Section 5. Contracts and Agreements. The Board of Directors, in its sole discretion, shall enter into any contract, agreement, lease, management contract, employment contract or lease of recreational equipment and facilities, engage the services of and discharge any manager, activities director, managing agent, independent contractor or other employee as it deems necessary. The Board of Directors, in its sole discretion, shall determine the duties and compensation of such persons so employed.

Section 6. Cross Easements. Appurtenant to each Lot shall be easements from each Owner to each other Owner, and from each Owner to the Master Association and from the Master Association to each Owner an easement for ingress and egress through the Common Areas and for maintenance repair and replacement as authorized.

Section 7. Encroachment Easements. If any portion of the Common Areas encroaches upon any Lot, or if any Lot encroaches upon any portion of the Common Areas, or if any of such encroachment shall occur hereafter as a result of shifting or settling of the buildings, or from alteration, repair or improvement to the Common Areas after damage by fire or other casualty, or as a result of condemnation of or eminent domain proceedings, then in each such event, a valid easement shall exist for such encroachment and for the maintenance thereof.

## V. DECLARANTS' RIGHTS

Section 1. Common Area Use. Declarant reserves the right to use any of the Common Areas to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Property prior to it being sold. This reservation of

right or privilege in Declarant includes, but is not limited to, the right to maintain models, erect signs and maintain a sales office until all Lots are sold.

Section 2. Additional Common Areas. Declarant, its successors and assigns, reserve the right to add additional common elements by conveying the same to the Master Association from time to time.

Section 3. Removing/Adding Land. Declarant shall have the sole and absolute right now, and in the future, to remove any portion of the Property from the operation of this Declaration or to subject additional property to this Declaration, all without the consent of any Owner, mortgagee or other third party.

Section 4. Assignment of Rights. Declarant shall have the right to assign all of its rights and obligations as Declarant hereunder to any person, corporation or other entity. The assignee of any such assignment shall be responsible for Declarant's duties and obligations under this Declaration and shall be entitled to all Declarant rights as provided for hereunder.

## VI. INSURANCE

Section 1. Minimum Insurance. The Master Association shall obtain and maintain at all times, to the extent available, at a minimum, liability insurance in such amounts and in such forms as may be considered appropriate and reasonable by the Board of Directors ("Master Association Insurance").

Section 2. Premiums. The premiums for the insurance coverage shall be a common expense to be included in monthly assessments levied by the Master Association against Owners. The premiums attributable to coverage on the Common Areas shall be apportioned among the Lots.

Section 3. Adjustment of Losses. The Master Association, or its designee, shall have the exclusive authority to adjust losses under the insurance policies.

Section 4. No Contribution. Under no circumstance shall the insurance coverage obtained and maintained by the Master Association be brought into contribution with insurance purchased by Owners or their mortgagees, or any Member Association.

Section 5. Additional Insurance. Any Member Association, as well as each Owner, may obtain additional insurance at its/his/her own expense provided that no party shall maintain insurance coverage which will tend to decrease the amount which the Master Association may realize under any insurance policy which it may have in force.

Section 6. Attorney-in-Fact. Except as hereinafter provided, the Master Association shall receive and hold the amount payable under the Master Association Insurance and apply the same to the cost of reconstruction or repair of the damaged or destroyed Common Areas.



## VII. EMINENT DOMAIN

Section 1. Taking by Eminent Domain. Payment for the taking of a portion of the Common Areas by eminent domain or the conveyance under threat thereof shall be deemed to be proceeds from insurance on account of casualty and shall be deposited with the Master Association.

## VIII. DESTRUCTION, CASUALTY AND REPAIRS

Section 1. Destruction/Casualty. In the event the proceeds of insurance are not sufficient to repair damage or if destruction is caused by any peril not herein required to be insured against, then the repair or reconstruction of the damaged Common Areas shall be accomplished promptly by the Master Association as a common expense. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for the same shall have all the priorities heretofore provided for in this Declaration and by the By-laws of the Master Association.

## IX. GENERAL PROVISIONS

Section 1. Right of Enforcement. This Master Declaration of Covenants, Conditions and Restrictions shall be deemed to run with the land to which they apply and all improvements thereon. The Owner of any Lot or portion thereof to which this Declaration applies, Declarant, an Owner or the Master Association may bring an action in any court of competent jurisdiction to enforce this Declaration and enjoin their violation, mandate their compliance or to recover damages for the breach thereof or for any other remedy or combination of remedies recognized at law or in equity.

Section 2. Penalties. In addition to the remedies described elsewhere in this Declaration, the Master Association is hereby authorized to levy against any Lot in violation of this Declaration an assessment penalty not to exceed One Hundred Dollars and no/100 (\$100.00) for each day a violation of this Declaration continues beyond thirty (30) days after notice of a violation has been given by the Association to the Owner of said Lot by certified mail, return receipt requested, or delivered in writing in by personal service. If the Owner of the Lot cannot be located after a diligent search or inquiry, the Association shall publish notice of the violation for two (2) successive weeks in a newspaper of general circulation in Polk County, Iowa. If the Owner has not fully complied with the terms of this Declaration within thirty (30) days after receiving notice, or thirty (30) days after second publication of notice, the Master Association shall have the authority to levy an assessment penalty as described herein. This assessment shall be a lien on the Lot and shall have the same status as any other assessment levied by the Master Association. Any Lot Owner objecting to the notice of violation shall have the right within thirty (30) days of receiving notice to request a hearing before the Master Association Board of Directors. Assessment of the penalty shall be stayed pending a hearing and final decision by the Master Association Board of Directors.

Section 3. Amendment. This Declaration may be amended in writing by an instrument signed and filed of record in the Office of the Recorder of Polk County, Iowa, certified by the Declarant or any officer of the Master Association that the same has been approved by a majority vote of the Members; provided, however, that Declarant does not own an interest in any Lot. Notwithstanding the foregoing or elsewhere herein, Declarant retains the sole right to amend this Declaration for any reason whatsoever so long as Declarant has an ownership interest in any portion of the Property.

Section 4. Binding Effect. Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarants, the Master Association, and the Owners, and their successors and assigns and all parties and persons claiming under any of them for an initial period of twenty-one years after the date they are recorded in the Polk County Recorder's Office, unless sooner modified or terminated, and shall be deemed covenants that run with the land.

Section 5. Severability. In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

Section 6. Waiver. Failure of the Master Association or any Owner to enforce any covenant, condition or restriction of this Declaration, the Articles of Incorporation or Bylaws of the Master Association, or the rules and regulations adopted pursuant thereto shall not constitute a waiver of the right to enforce the same thereafter.

Section 7. Captions. The captions of the articles, sections and any paragraphs, of this Declaration, or the lack thereof, are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

Section 8. Conflict with Governmental Regulations. The Property subject to this Declaration shall also be subject to any and all applicable regulations of the City of Bondurant, Iowa, Polk County and any other governmental entities having jurisdiction including, but not limited to, zoning ordinances, subdivision ordinances, life safety and building codes as well as other such regulations. Whenever there is a conflict between the provisions of this Declaration and the ordinances, statutes or regulations of the City, County, State, or other applicable governmental entity having jurisdiction over the Property, that provision which is most restrictive shall be binding unless otherwise prohibited or preempted by law.

Section 9. Reasonable Period of Enforcement. If any of the terms of this Declaration shall be held by a court of competent jurisdiction to be void or unenforceable by reason of the period of time herein stated for which the Declaration may be effective or amount of any penalty

